# NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA NEW ALBANY DIVISION

NATHANIEL T. BURCH, JR.,	)
Plaintiff,	)
VS.	) NO. 4:05-cv-00102-DFH-WGH
	)
JO ANNE B.	)
BARNHART, COMMISSIONER OF THE	)
SOCIAL SECURITY ADMINISTRATION,	)
	)
Defendant.	)

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA NEW ALBANY DIVISION

NATHANIEL T. BURCH, JR.,	)
Plaintiff,	)
v.	) CASE NO. 4:05-cv-0102-DFH-WGH
JO ANNE B. BARNHART, Commissioner of the Social Security Administration,	) ) )
Defendant.	)

#### ENTRY ON JUDICIAL REVIEW

Plaintiff Nathaniel Burch seeks judicial review of a final decision by the Commissioner of Social Security denying his application for disability insurance benefits. Acting for the Commissioner, an Administrative Law Judge ("ALJ") determined that Mr. Burch was not disabled under the Social Security Act because he retained the residual functional capacity to perform a significant range of light work. Mr. Burch claims that substantial evidence does not support the ALJ's residual functional capacity assessment and credibility determination. For the reasons explained below, the ALJ's decision is affirmed.

## **Background**

Mr. Burch was 52 years old in 2005 when the ALJ found him ineligible for disability benefits under the Social Security Act. Mr. Burch has a high school education and worked most recently in a warehouse. R. 56, 63.

Mr. Burch applied for disability benefits on March 19, 2003. R. 45. He claimed to suffer from chest pain related to atrial fibrillations, hypertension, diabetes mellitus, and arthritis of the knee. R. 50. Mr. Burch claims that these impairments disabled him within the meaning of the Social Security Act on or after March 5, 2003, the last day he held gainful employment. See R. 45, 51.

In 1998, Mr. Burch was diagnosed with severe aortic insufficiency and coronary artery disease. He underwent single bypass surgery and valve replacement on March 27, 1998, and appeared to get better. See R. 84, 166, 184, 198. After the surgery, he returned to work as a delivery driver and later worked in a warehouse. R. 51, 63.

By April 2001, however, some of Mr. Burch's heart related problems returned. He complained to his cardiologist, Dr. Mohammed Hussain, of renewed chest pain and shortness of breath. Mr. Burch's job required him to push, pull, stand, and walk, and all of these activities caused his symptoms to increase. It was about this time that Mr. Burch initially considered applying for disability benefits. Despite his pain he continued to work. R. 178. In August 2002, Mr. Burch complained of tiring easily and of shortness of breath, but he denied any chest pain or leg swelling. R. 166.

On March 5, 2003, Mr. Burch's last day of work, he returned to Dr. Hussain and presented with an elevated heart rate and blood pressure. Dr. Hussain found

that Mr. Burch appeared to be going in and out of atrial fibrillation, and he prescribed amiodarone, an antiarrhythmic medication. R. 163. On March 25, 2003, Dr. Hussain advised Mr. Burch not to return to work and to apply for disability. Mr. Burch, however, reported no palpitations, weakness, or shortness of breath, nor side effects from the amiodarone. R. 161.

Mr. Burch's general practitioner, Dr. Agnes Bacala, noted that Mr. Burch was feeling better on May 1, 2003 and his blood pressure and heart rate appeared to be under control. R. 220, 222. On December 5, 2003, however, Dr. Bacala wrote a letter describing Mr. Burch's continued heart problems and suggested that he was totally disabled and unable to work. R. 219.

Mr. Burch complained of no chest pain and only mild shortness of breath during a June 4, 2004 visit with Dr. Hussain. R. 335. Dr. Bacala's notes from a follow-up visit on June 19, 2004 suggest that Mr. Burch reported no chest pain and was feeling better. R. 339.

## Testimony at the Hearing

Mr. Burch applied for disability benefits on March 5, 2003. His claim was denied initially and upon reconsideration. At his request, a hearing was held before Administrative Law Judge Roland D. Mather on July 16, 2004.

Mr. Burch testified that he walked about two miles per day, with breaks for rest, and up to one-quarter mile without breaks. R. 357-58. He testified that he could stand for only about one hour at a time, but that he was able to do several household tasks, including occasional cooking and shopping, light housework, vacuuming (with breaks), and caring for his dog and horse. R. 349, 360, 362.

Vocational expert William Irvin opined that Mr. Burch could perform light work in a controlled environment. Mr. Irvin opined that Mr. Burch could work as a cashier, general clerk, or assembler, and that there were 65,600 jobs available in those combined fields in Indiana. R. 375-76.

# Procedural History

The ALJ issued his decision denying benefits on January 21, 2005. See R. 11-17. The Appeals Council denied further review of the ALJ's decision, R. 11A-C, so his decision is treated as the final decision of the Commissioner. See *Smith v. Apfel*, 231 F.3d 433, 437 (7th Cir. 2000); *Luna v. Shalala*, 22 F.3d 687, 689 (7th Cir. 1994). Mr. Burch filed a timely petition for judicial review. The court has jurisdiction in the matter under 42 U.S.C. § 405(g).

## The Statutory Framework for Determining Disability

To be eligible for disability insurance benefits, a claimant must establish that he suffers from a disability within the meaning of the Social Security Act. To prove disability under the Act, the claimant must show that he was unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that could be expected to result in death or that has lasted or could be expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 423(d). Mr. Burch was disabled only if his impairments were of such severity that he was unable to perform work that he had previously done and if, based on his age, education, and work experience, he also could not engage in any other kind of substantial work existing in the national economy, regardless of whether such work was actually available to him. *Id*.

This standard is a stringent one, and it has decisive force for Mr. Burch, who has serious impairments and cannot do his prior work. The Act does not contemplate degrees of disability or allow for an award based on partial disability. Stephens v. Heckler, 766 F.2d 284, 285 (7th Cir. 1985). Even claimants with substantial impairments are not necessarily entitled to benefits, which are paid for by taxes, including taxes paid by those who work despite serious physical or mental impairments and for whom working is difficult and painful.

The implementing regulations for the Act provide the familiar five-step process to evaluate disability. The steps are:

- (1) Has the claimant engaged in substantial gainful activity? If so, he was not disabled.
- (2) If not, did the claimant have an impairment or combination of impairments that are severe? If not, he was not disabled.

- (3) If so, did the impairment(s) meet or equal a listed impairment in the appendix to the regulations? If so, the claimant was disabled.
- (4) If not, could the claimant do his past relevant work? If so, he was not disabled.
- (5) If not, could the claimant perform other work given his residual functional capacity, age, education, and experience? If so, then he was not disabled. If not, he was disabled.

See generally 20 C.F.R. § 404.1520. When applying this test, the burden of proof is on the claimant for the first four steps and on the Commissioner for the fifth step. *Young v. Barnhart*, 362 F.3d 995, 1000 (7th Cir. 2004).

Applying the five-step process, the ALJ found that Mr. Burch satisfied step one because he had not engaged in substantial gainful activity since his alleged onset date of disability. At step two, the ALJ found that Mr. Burch suffered the severe impairments of "coronary artery disease . . . and aortic valve replacement, hypertension, diabetes and degenerative arthritis of the right knee." At step three, the ALJ found that Mr. Burch failed to demonstrate that any of his severe impairments met or equaled any listed impairment. At step four, the ALJ found that Mr. Burch was not able to perform any of his past relevant work. The ALJ then considered Mr. Burch's residual functional capacity at step five and found that he retained the residual functional capacity to perform a significant range of light work, despite his severe impairments.

### Standard of Review

"The standard of review in disability cases limits . . . the district court to determining whether the final decision of the [Commissioner] is both supported by substantial evidence and based on the proper legal criteria." Briscoe v. Barnhart, 425 F.3d 345, 351 (7th Cir. 2005), quoting Scheck v. Barnhart, 357 F.3d 697, 699 (7th Cir. 2004). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Diaz v. Chater, 55 F.3d 300, 305 (7th Cir. 1995), quoting Richardson v. Perales, 402 U.S. 389, 401 (1971). To determine whether substantial evidence exists, the court must "conduct a critical review of the evidence,' considering both the evidence that supports, as well as the evidence that detracts from, the Commissioner's decision . . . ." Briscoe, 425 F.3d at 351, quoting Lopez v. Barnhart, 336 F.3d 535, 539 (7th Cir. 2003); see also Zurawski v. Halter, 245 F.3d 881, 888 (7th Cir. 2001). The court must not attempt to substitute its judgment for the ALJ's judgment by reweighing the evidence, resolving material conflicts, or reconsidering facts or the credibility of witnesses. Cannon v. Apfel, 213 F.3d 970, 974 (7th Cir. 2000); Luna v. Shalala, 22 F.3d 687, 689 (7th Cir. 1994). Where conflicting evidence allows reasonable minds to differ as to whether a claimant is entitled to benefits, the court must defer to the Commissioner's resolution of that conflict. Binion v. Chater, 108 F.3d 780, 782 (7th Cir. 1997).

A reversal and remand may be required, however, if the ALJ committed an error of law, *Nelson v. Apfel*, 131 F.3d 1228, 1234 (7th Cir. 1997), or based the

decision on serious factual mistakes or omissions. *Sarchet v. Chater*, 78 F.3d 305, 309 (7th Cir. 1996). This determination by the court requires that the ALJ's decision adequately discuss the relevant issues: "In addition to relying on substantial evidence, the ALJ must also explain his analysis of the evidence with enough detail and clarity to permit meaningful appellate review." *Briscoe*, 425 F.3d at 351, citing *Herron v. Shalala*,19 F.3d 329, 333-34 (7th Cir. 1994). Although the ALJ need not provide a complete written evaluation of every piece of testimony and evidence, *Schmidt v. Barnhart*, 395 F.3d 737, 744 (7th Cir. 2005), a remand may be required if the ALJ has failed to "build a logical bridge from the evidence to his conclusion." *Steele v. Barnhart*, 290 F.3d 936, 941 (7th Cir. 2002).

#### Discussion

The ALJ found that Mr. Burch was able to work at the light exertional level. According to 20 C.F.R. § 404.1567(b), light work includes "a good deal of walking or standing." The ALJ found Mr. Burch was able to lift up to twenty pounds infrequently and ten pounds frequently and was able to walk or stand for substantial periods of time. The ALJ also found Mr. Burch not able to climb ladders, ropes or scaffolds and found he would need to avoid concentrated exposure to heat, cold, hazardous machinery, and heights.

Mr. Burch claims that he cannot walk or stand for extended periods and that the ALJ failed to build a logical bridge to the residual functional capacity finding. He makes two arguments: (1) that the ALJ did not base his ultimate

decision on all of the relevant medical evidence, and (2) that the ALJ failed to evaluate fully the relevant evidence when making his credibility finding.

## I. Discussion of the Relevant Evidence

Mr. Burch claims that the ALJ failed to evaluate several pieces of evidence when assessing his residual functional capacity. The ALJ must base the decision upon consideration of all relevant evidence, and the reasons for the ALJ's conclusion must be stated in a manner sufficient to perform an informed review. *Briscoe*, 425 F.3d at 351. The ALJ is required to discuss all relevant lines of evidence, see *Golembiewski v. Barnhart*, 322 F.3d 912, 917 (2003), though she need not make written evaluation of every individual piece of evidence in the record. *Dixon v. Massanari*, 270 F.3d 1171, 1176 (7th Cir. 2001).

Three pieces of evidence cited by Mr. Burch date from after March 5, 2003, Mr. Burch's claimed onset date, and the ALJ addressed all three. See R. 13. Two are letters from Dr. Hussain from March 2003, and one is a letter from Dr. Bacala dated December 5, 2003. The letters from Dr. Hussain reflect examinations on March 5, 2003, and on March 25, 2003. The first letter identifies a new onset of chest pain, fatigue, and shortness of breath. R. 163. Dr. Hussain opined that Mr. Burch was going in and out of atrial fibrillation, and prescribed amiodarone. *Id.* 

Twenty days after Mr. Burch's alleged onset date, he returned to Dr. Hussain for another examination. R. 161. Dr. Hussain reported that Mr. Burch

was not aware of any palpitations, weakness, shortness of breath, or dizziness. *Id.* Mr. Burch appeared to respond favorably to the amiodarone therapy, and did not report chest pain or side effects following the therapy. *Id.* Nevertheless, Dr. Hussain advised Mr. Burch to apply for disability and not to return to work. *Id.* The ALJ made an effort to obtain more medical evidence from Dr. Hussain, but did not get any. R. 13. The ALJ accorded Dr. Hussain's letters decreased weight due to this inconsistency and lack of development. See *id.* 

Similarly, the ALJ gave Dr. Bacala's December 5, 2003 letter reduced evidentiary weight because it lacked clinical support. Dr. Bacala reported Mr. Burch's history of chest pain and assorted heart related symptoms and advised that Mr. Burch was medically disabled and could no longer work. R. 216. At that point, however, Dr. Bacala had not seen Mr. Burch for approximately five months and did not provide specific clinical findings or opinions about Mr. Burch's physical limitations and ability to work. See R. 343. The ALJ noted this, and assigned the letter diminished weight because it did not include a specific explanation of how Mr. Burch's medical history would limit his physical capacity to work. R. 13.

Mr. Burch argues that the ALJ gave too little weight to two other items from before his alleged onset date: notes from a July 2001 knee surgery and an April 2001 letter from Dr. Hussain. The ALJ mentioned both of these pieces of evidence in his discussion of Mr. Burch's impairments. R. 13. The ALJ gave them minimal

weight, however, because Mr. Burch was working through March 5, 2003. Although the April 2001 letter discusses Mr. Burch's chest pain and related symptoms related to his heart condition, he was still working at the time, and continued working for nearly two more years. Accordingly, the ALJ could reasonably give it less weight. Additionally, the record does not reflect any other knee treatments nor any complaints of knee pain from Mr. Burch other than the single surgery performed in 2001. See R. 106.

The ALJ examined and discussed all five pieces of evidence cited by the plaintiff. He did not specifically evaluate the pieces of evidence from before the alleged onset date, but he addressed the relevant lines of evidence, and he sufficiently articulated his reasons for assigning weight as he did. See *Golembiewski*, 322 F.3d at 917. The ALJ, therefore, built a logical bridge from the evidence to his conclusion. *Dixon*, 270 F.3d at 1176.

Mr. Burch claims that the ALJ erred by basing his decision on non-treating sources' opinions and using those opinions to form the key hypothetical question to the vocational expert. The ALJ relied on the limitations described by state medical consultant Dr. Corcoran. R. 209-16, 374. Dr. Corcoran issued his report after reviewing the medical evidence through June 2003, all that was available to him. R. 216.

An ALJ may discount a treating physician's medical opinion when it is inconsistent with the opinion of a consulting physician, *Dixon*, 270 F.3d at 1178, or when the treating physician's opinion is internally inconsistent, *Skarbek v. Barnhart*, 390 F.3d 500, 503 (7th Cir. 2004). The ALJ has discretion – even the obligation – to weigh conflicting opinions. *Caviness v. Apfel*, 4 F. Supp. 2d 813, 824 (S.D. Ind. 1998).

Dr. Corcoran did not conclude, as Drs. Hussain and Bacala did, that Mr. Burch was disabled. It is unclear what additional limitations Mr. Burch wanted the ALJ to include in his residual functional capacity finding. The ALJ considered Dr. Corcoran's assessment because the limitations on physical activity that he provided were more specific and limiting than the advice of Mr. Burch's treating physicians. Indeed, Dr. Corcoran's twenty pound lifting limit is more restrictive than the fifty pound limit to which Mr. Burch testified. Drs. Hussain and Bacala did not assess Mr. Burch's physical capacities or limitations as specifically as Dr. Corcoran did.

Mr. Burch's treating physicians offered no opinion that is more restrictive than Dr. Corcoran's other than their shared general conclusion that Mr. Burch was disabled. The ALJ noted that efforts were made to obtain more specific evidence about Mr. Burch's physical capacity from Dr. Hussain, but no additional information was provided. The treating physicians' medical evidence and opinions do not support more restrictive limitations than those found by Dr. Corcoran.

Without specific medical evidence or opinion from those treating physicians about Mr. Burch's physical capacities, the ALJ did not err by according their conclusions diminished weight.

#### II. *Credibility Determination*

The ALJ found Mr. Burch's testimony about his limitations and ability to work not fully credible. Ordinarily a reviewing court defers to an ALJ's credibility determination. *Indoranto v. Barnhart*, 374 F.3d 470, 474 (7th Cir. 2004). Absent legal error, an ALJ's credibility finding will not be disturbed unless "patently wrong." *Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000); *Diaz v. Chater*, 55 F.3d 300, 308 (7th Cir. 1995). Nevertheless, the ALJ must explain adequately the reasons behind a credibility finding and must provide more than a conclusory statement that a claimant's allegations are not credible. *Brindisi v. Barnhart*, 315 F.3d 783, 787 (7th Cir. 2003). The ALJ may not disregard a claimant's subjective complaints merely because they are not fully supported by objective medical evidence, *Knight v. Chater*, 55 F.3d 309, 314 (7th Cir. 1995), but the ALJ may discount subjective complaints that are inconsistent with the evidence as a whole. *Id.*; 20 C.F.R. § 404.1529.

In this case, the ALJ offered a detailed explanation for his credibility finding. After Mr. Burch's heart and knee surgeries, his treatment had been conservative, consisting mostly of medication therapy and monitoring. During a May 2003 non-diagnostic exercise stress test, Mr. Burch reported no angina and showed no

arrhythmia or hypertension. R. 143. He has had one heart surgery, the single bypass and valve replacement in 1998, R. 84, and only one knee surgery, in 2001 while he was still working. R. 106. The ALJ also noted that Mr. Burch responded well to questions during the hearing and was alert at all times. R. 14. The record reflects some chest pain and atrial fibrillation during and around March 2003, but Mr. Burch showed improvement in the following months with medication. See R. 222, 336, 339.

Mr. Burch testified that he was able to walk for several miles, with breaks for rest, and could do light housework. He testified that he lay down two to four times per day, but there is no medical evidence in the record nor advice by any doctor that Mr. Burch should have done so. Although Mr. Burch points out that the ALJ would have found him disabled had the ALJ taken his testimony "in total," the ALJ did not fully accept his testimony. R. 14. The ALJ further pointed out that Mr. Burch's shortness of breath was described as mild by Dr. Hussain on June 4, 2004 and that his atrial fibrillation had improved with treatment after the March 2003 episode. R. 14; see R. 335-339.

The ALJ accepted much of Mr. Burch's testimony, but not his assertion that he needed to lie down several times per day. Because Mr. Burch's claims conflict with the medical evidence in the record showing improvement and Mr. Burch's own testimony about his physical capacities, the ALJ did not err by rejecting this part of Mr. Burch's testimony.

#### Conclusion

For the above reasons, the Commissioner's decision must be affirmed. The court will enter final judgment accordingly.

So ordered.

Date: July 18, 2006

DAVID F. HAMILTON, JUDGE United States District Court Southern District of Indiana

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